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SUPREME COURT, U.S.

80-5227

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

CHERYL MAFFEY

v.

STATE OF OREGON ex rel JUVENILE

DEPARTMENT OF KLAMATH COUNTY

On Appeal From the Court of Appeals of Oregon

JURISDICTIONAL STATEMENT

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July 1980

QUESTION PRESENTED

Is the Oregon statute, which permits the permanent termination of the parent-child relationship by the application of the preponderance of evidence standard, violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

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Schneiderman v. United States, 320 U.S. 118(1943) 7

Shapiro v. Thompson, 394 U.S. 618 (1969). 6

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CONSTITUTION, STATUTES AND RULES

Constitution of the United States:

Fourteenth Amendment. 1,2,5, 6,9,10

Oregon Statutes:

ORS 419.523 1
ORS 419.525 1,2,5

Supreme Court Rule 10(3). 1

28 U.S.C. 1257(2) 1

OPINIONS BELOW

The oral opinion issued by the Trial Court Judge in open court is attached to this Jurisdictional Statement as Appendix A. It was issued April 4, 1979. The Court of Appeals of Oregon affirmed without opinion on March 3, 1980 and declined reconsideration without opinion on April 9, 1980. The Supreme Court of Oregon denied review without opinion on May 13, 1980. These are attached as Appendices B, C and D respectively.

JURISDICTION

This proceeding began in the Juvenile Court for the State of Oregon, County of Klamath. It was brought to terminate Appellant's parental rights to her son, Noel Barefoot Wright, pursuant to Oregon Revised Statutes 419.523 and 419.525. The Order Terminating Appellant's Parental Rights was entered on April 6, 1979, following which a timely appeal was taken to the Oregon Court of Appeals. The Court of Appeals affirmed on March 3, 1980 (Appendix B). On April 9, 1980, the Court of Appeals denied the timely request for reconsideration (Appendix C), and on May 13, 1980, the Supreme Court of Oregon denied review (Appendix D). A Notice of Appeal in this case was filed in the Oregon Court of Appeals on July 28, 1980, and is attached as Appendix E.*/ Jurisdiction is conferred on this Court by 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution, or U.S. CONST. amend. XIV, §1, reads as follows:

> Citizenship; privileges and immunites; due process; equal protection. All persons born or

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*/ A copy of the Notice of Appeal was filed on July 24, 1980, in the Juvenile Court for Klamath County because it was the Court possessed of the record. Supreme Court Rule 10(3). A second orginal Notice of Appeal was filed in the Oregon Court of Appeals on August 8, 1980, to ensure the jurisdictional requirements had been met.

> naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Oregon Revised Statute 419.525(2) provides as follows:

> (2) A hearing shall be held by the court on the question of terminating the rights of the parent or parents. No such hearing shall be held any earlier than 10 days after service or final publication of the summons. The facts on the basis of which the rights of the parents are terminated, unless admitted, must be established by a preponderance of competent evidence and a stenographic or other report authorized by ORS 8.340 shall be taken of the hearing.

STATEMENT OF FACTS

An order terminating the rights of a parent to his or her child may be issued in Oregon when the substantive and procedural requirements of ORS 419.523 and 419.525 have been met.*/ Such an order permanently terminates all rights of the parent and allows the court to release the child for adoption.

On March 23, 1978, a Petition to Terminate Appellant's Parental Rights to her son, Noel Barefoot Wright, was filed in the Juvenile Department of the Circuit Court of Klamath County. The basis asserted for termination was that Cheryl Maffey suffered from emotional and mental illness which made her unfit by reason of condition seriously detrimental to the child. An Amended Petition was filed August 2, 1978, wherein it was alleged Cheryl Maffey was unfit by reason of conduct and condition seriously detrimental to the child.

At trial the Department sought to show that Cheryl Maffey had a history of frequent institutionalizations and an unstable lifestyle characterized by many changes of residence, repeated

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*/ These Statutes are represented in Appendix F.

requests for aid from social service agencies, frequent foster care placements for her son and a lack of cooperation with caseworkers. It also sought to show she suffered from chronic schizophrenia and was unable to care for her son and would never be able to do so adequately. It called nine caseworkers from the Children's Services Division, two laypersons and two professionals in the field of psychology and psychiatry. The testimony of the caseworkers covered the years from July, 1972, to April of 1978.*/ No caseworker had contact with Appellant after that time. The basis they gave for termination is best condensed in the testimony given by Appellant's last caseworker at pages 847-849 of the transcript where he stated he sought termination due to Cheryl Maffey's condition and the best interest of the child. A psychologist called by the Department testified psychological tests revealed the child required a stable, secure and consistent home life and exhibited a stunted emotional growth at the time of testing.**/ The psychiatrist called by the Department gave similar testimony and further stated he found, on the basis of a one hour interview, the Appellant to be suffering from chronic schizophrenia.***/

Appellant, in her case, did not dispute she had been in various institutions, had moved frequently and had sought aid from social agencies for herself and her child numerous times. She also agreed she suffered from an illness which made it more difficult for her to cope with herself and her child than if

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*/ Tr. 230-294, 439-558, 601-909, 1140-1146. Tr. refers to the transcript of the trial held November 27-December 1, 1978 and December 18-December 22, 1978.

**/ Tr. 22, 33-38.

***/ Tr. 307-311, 296-297.

she were not afflicted, although she disputed the finding that she suffered from chronic schizophrenia. She maintained, however, that given the proper supportive services she was capable of adequately caring for her child. On this point her last caseworker apparently agreed with her. (See Tr. 897-898) She sought to show she had never previously been able to find a community where all the necessary supportive services were present on a stable, permanent basis, but that she at the time of trial found herself in such a community and she was ready and able to assume the responsibility for the care of her child.*/

Appellant called her treating psychiatrist who testified he had treated her for seven months and found she suffered from a borderline personality which did not prohibit her from immediately accepting the responsibility for the care of her child provided she maintained proper medical treatment and continued utilizing the supportive services available to her from the Urban Indian Program in Portland, Oregon, and the surrou ing Indian community.**/ He stated the prognosis for the foreseeable future was favorable. Appellant also called three people, a psychiatric social worker, a social worker and a caseworker from Portland's Urban Indian Program, who had worked with her. Each of them told about the supportive services available to Cheryl Maffey and testified that the mother had made a good adjustment in the Indian community in Portland, took good care of her youngest son living with her, and was capable of caring for Noel Barefoot Wright at that time.***/

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*/ Tr. 45-229, 1101, 1140

**/ Tr. 347-350, 391-392.

***/ Tr. 910-975, 976-992, 1050-1059.

She also called a friend to testify to the lack of permanent supportive aid for her in Klamath County when she lived there. (See Tr. 1080-1091)

During the trial on December 13, 1978, counsel for Cheryl Maffey filed a memorandum of law with the Court in which he asserted a page 6 the Department's burden of proof should be that of 'beyond a reasonable doubt' rather than a 'preponderance of the evidence'. Counsel for appellant thereafter made final argument by submitting a written memorandum to the Court which was subsequently filed on January 29, 1979. At pages 17, 18 and 19 Counsel argued that application of the standard of a preponderance of evidence would deprive Cheryl Maffey of her right to due process under the Consitution of the United States.

On April 4, 1979, the Juvenile Court issued oral findings of fact and a ruling that Cheryl Maffey was "unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent is improbable in the foreseeable future due to conduct or conditions not likely to change"*/ The Court made this finding based on a preponderance of evidence. On review the Oregon Court of Appeals affirmed without opinion. (See Appendix B) Appellant's first assignment of error in that Court argued the Trial Court erred in applying the standard of proof in ORS 419.525(2) to find Cheryl Maffey unfit because the Due Process Clause of The Fourteenth Amendment of the United States Constitution required a more stringent standard of proof. Appellant petitioned for review in timely fashion, again asserting termination of her parental rights by a preponderance of evidence standard violated her right to due process under the Fourteenth Amend-

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*/ Tr. 1154-1155, 1168.

ment to the United States Constitution. The Oregon Court of Appeals declined reconsideration and thereafter the Oregon Supreme Court denied review, both without opinion. (See Appendices C and D)

THE QUESTION IS SUBSTANTIAL

I. THE OREGON STATUTE PERMITTING TERMINATION OF THE PARENT CHILD RELATIONSHIP BY A PREPONDERANCE OF THE EVIDENCE STANDARD IS VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A.

The right of a parent to the companionship and management of his or her children is a liberty, based in intrinsic human rights and natural law, around which strict constitutional protections have evolved. This Court has afforded family life both substantive and procedural protection.*/ Few human rights are, in our society, considered to be more fundamental and dear than the right to family integrity. When the State seeks to infringe upon a fundamental right it must have a compelling interest in doing so and the manner in which it does so must be rationally and necessarily related to the interest it assertedly promotes.**/ The State interest is the protection of the best interest of the children. Appellant would not dispute this interest is a legitimate State interest. (See Stanley v. Illinois, 405 U.S. 645, 652 (1972) Upon 'critical examination', however, it can be seen the interest does not become compelling, if it ever does, until all evidence has been heard and the standard of proof applied. (See Zablocki v. Redhail, 434 U.S. 374, 383 (1978) Only then does the State

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*/ Smith v. Organization of Foster Families, 431 U.S. 816, 842, 843, 845, 53 L.Ed. 14, 97 S. Ct. 2094 (1977) and cases cited therein at n. 46 and n. 47.

**/ Roe v. Wade, 410 U.S. 113, 152, 155-56 (1973); Dunn v. Blumstein, 405 U.S. 330, 335, 342; Kramer v. Union Free School Dist., 395 U.S. 621, 627 (1969); Shapiro v. Thompson, 394 U.S. 618, 638 (1969); Bates v. Little Rock, 361 U.S. 516, 525 (1960)

have a determination respective to the fitness of the parent and the harm to the child. Furthermore, the application of the standard of a preponderance of evidence is not rationally and necessarily related to the interest of the State since it clearly increases the risk that the parent-child relationship will be terminated in cases in which the best interest of the children coincides with the interest of the parent in maintaining family integrity. Obviously the State registers no gain toward its goal when it separates children from the custody of fit parents. (See Stanley v. Illinois, supra, 405 U.S. at 652)

B.

Apart from the requirement that the State's interest be compelling, it would appear the decision of this Court in Addington v. Texas, 441 U.S. 418 (1979) may be dispositive of the question here presented. A parent whose rights to his or her children is terminated is as surely stigmatized as an individual convicted of committing a crime. Parents who are found to have fallen below society's standards in the care of their children, whether because of neglect or incapacity, are viewed with disdain by their peers. That a termination of parental rights is a sanction, punitive in nature and as severe as the loss of one's freedom, has been recognized by Oregon's highest court.*/ This intrusion into the family unmistakably constitutes a deprivation of a liberty interest which is, at the very least, equivalent to that involved in a civil commitment proceeding, a denaturalization, expatriation or deportation hearing.**/ Arguably the interest is as great as

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*/ State v. Jamison, 251 Or. 114, 118, 444 P2d 15, 444 P2d 1005 (1968); State v. McMaster, 259 Or. 291, 486 P2d 567 (1971).

**/ Addington v. Texas, supra; Woodby v. INS, 385 U.S. 276 (1966); Chaunt v. United States, 364 U.S. 350 (1960); Nishikawa v. Dulles, 356 U.S. 129 (1958); Gonzales v. Landon, 350 U.S. 920 (1955); Schneiderman v. United States, 320 U.S. 118 (1943).

that involved in In re Winship, 397 U.S. 358.

Ideally the State does not deprive parents of this liberty interest unless they are shown to be unfit and the children suffer serious detriment due to the parent's unfit conduct or condition. The State has no interest in terminating parents if they are fit parents or if the children do not suffer harm by reason of that unfitness. Nevertheless, the preponderance of evidence standard increases the risk that fit parents will be terminated and that termination will occur in cases where the best interest of the children is in maintenance of family integrity.

The relative interests of the State and the parent and the attendant risks must be viewed in light of the function of a standard of proof. That is "to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication."*/ In that light it must be seen that a proceeding brought to terminate permanently the parent-child relationship is not a proceeding in which the individual should be asked to 'share equally' the 'risk of error'. (See Addington v. Texas, supra, 441 U.S. at 427)

In the instant case the Department's witnesses sought to establish that Cheryl Maffey could not and would never be able to provide adequate physical and emotional support for her son. An extensive review of her previous life was presented revealing frequent moves, numerous hospitalizations, many pleas for aid and support and requests for foster care.

The appellant, on the other hand, sought to show she had never previously had stable permanent supportive services, but

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*/ Addington v. Texas, supra, 441 U.S. at 423, citing Justice Harlan's concurring opinion in In re Winship, 397 U.S. 358, 370 (1970).

at the time of trial did have such services and was ready and able to assume responsibility for the physical and emotional support of her son on a full time basis at that time and in the foreseeable future. She presented medical and lay testimony concerning her condition, her living circumstances, social life, and the surrounding community in which she lived.

Oregon law requires that termination of a parent's right on the basis of his or her condition be supported by evidence that 1) the parent could not at the time of trial provide the child with adequate physical and emotional care (with the aid of social agencies, if necessary); and 2) the child could not be successfuily integrated into the home in the foreseeable future due to the condition.*/ Taken in that context the burden of proof becomes very important.

Several other Courts have dealt with the question presented here. At least three State Courts have held due process does not require a more stringent standard of proof than a preponderance.**/ At least four State Courts have held due process does require a more stringent standard.***/ Additionally, several Courts have decided the issue of the standard of proof on other than due process grounds. One Court has concluded the burden of proof was required to be 'beyond a reasonable doubt' by the constitution of its own State. (See State v. Robert H., 393 A.2d 1387 (N.H. 1978) Several states have required the

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*/ State v. Blum, 1 Or. App. 409, 417, 463 P.2d 367 (1970).

**/ In the Matter of K.M.S., 26 Or. App. 219, 552 P.2d 578 (1976); In the Matter of N.J.W., 273 N.W.2d 134 (S.D. 1978); Hernandez v. State ex rel Arizona Dept., 23 Ariz. App. 32, 530 P.2d 389 (1975).

***/ Matter of C.L.T., 597 P.2d 518 (Alaska, 1979); Matter of Welfare of Rosenbloom, 266 N.W.2d 888 (Minn. 1978); In re Heidi T., 151 Cal. Rptr. 263 (1978); In re C.H., -S.W.2d-, 48 U.S.L.W. 2669 (Tex. 1980).

standard to be 'clear and convincing'.*/ At least two other States allow the preponderance of evidence standard.**/ At least two Federal District Courts have held due process requires a more stringent standard.***/

CONCLUSION

This Court has noted probable jurisdiction in John Doe and Jane Roe v. State of Delaware, No. 79-5932, and has set the case for plenary briefing and argument. The Appellants therein raise three questions, the second of which is whether the parent-child relationship may be terminated upon the evidentiary standard of a mere preponderance of evidence without violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

The Appellant herein requests this Court, for the reasons set out in this Jurisdictional Statement, to note probable jurisdiction in this case and to set it for plenary briefing and argument also.

Respectfully submitted,

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*/ In re Sego, 513 P.2d 831 (Wash. 1973); In the Matter of Inquiry into J.L.B., 594 P.2d 1127 (Mont. 1979); In re Terry D., 148 Cal. Reptr. 221 (1978); Adoption of J.S.R., 374 A.2d 860 (D.C. 1977).

**/ People in the Interest of M.B. and M.B., 535 P.2d 192 (Colo. 1975); State in INterest of Pitts, 535 P.2d 1244 (Utah 1975).

***/ Alsager v. District Court, 406 F. Supp. 10 (S.D. Iowa 1975) affirmed on other grounds 545 F.2d 1137 (8th Cir. 1976); Sims v. State Dept. of Welfare, 438 F.Supp. 1179 (S.D. Tex. 1972) reversed on procedural grounds, 99 S. Ct. 2371 (1979).